

## **West Midlands Fire and Rescue Services Regional Control Centre Company Member's Agreement**

### **Report of the Chief Fire Officer**

For further information about this report please contact Alan Taylor, Chief Fire Officer, on 01743 260201 or Paul Raymond, Deputy Chief Fire Officer, on 01743 260205.

### **1 Purpose of Report**

This report updates Members on the legal documentation required to complete the setting up of the Local Authority Controlled Company, known as 'West Midlands Fire and Rescue Services Regional Control Centre Company'. In particular, the report discusses the Members' Agreement, which is attached as an appendix.

### **2**

#### **Recommendations**

The Fire Authority is asked to:

- a) Agree in principal to the signing of the agreement by the Chair of the Authority, once the agreed cost apportionment method is formally part of the document;
- and
- b) If necessary, to delegate authority to the Strategy and Resources Committee to agree the document, if there are financial concerns surrounding the cost apportionment method;
- or
- c) Agree to the signing of this Members' Agreement.

### **3 Background**

Members will be aware that the national FiReControl project is working towards the migration of English fire and rescue control functions into 9 regional control centres. In the West Midlands region it is proposed that the regional control centre will become operational from 2010.



Construction of the control centre building in Wolverhampton is well underway and is scheduled for practical completion in December 2007. Through the West Midlands Regional Management Board, a number of work streams are currently focussed on different aspects of preparing the fire and rescue services for migration into the regional control centre, looking at the operational implications for each service, and the human resource, financial and legal implications of moving to a regional control centre.

In December 2006 Members gave authority to establish a company, which will be responsible for managing the regional control centre when it is operational. The company is wholly owned and controlled by the five Fire and Rescue Authorities (FRAs) in the West Midlands region. The rationale is that the company model gives the Regional Fire Control centre a separate legal identity and provides a clear governance structure, through which the FRAs can own the Fire Control centre and manage its operations.

The West Midlands Fire and Rescue Services Regional Control Centre company was incorporated on 19 February 2007. Some of the directors of the company changed following elections but five directors (an elected Member from each of the five FRAs) are now in post and ready to begin the work of the company. Initially the company will need to meet formally primarily to receive briefings on the progress of the project and then to start considering some of the key decisions to be made. These include matters relating to the lease and facilities management for the new building and staffing arrangements, all of which will drive the ultimate costs for local tax payers.

The principles by which costs of the regional control centre (and hence costs and liabilities of the company), once operational, will be shared between the five FRAs, have unfortunately yet to be agreed, even though this work was requested urgently by Members in 2006. Detailed work on cost apportionment methodology is underway at present with the expectation that proposals will be presented to Members as soon as they are available. Indications are that the cost apportionment method will be presented to the Regional Management Board in December and the agreement at that meeting will be brought to Members' attention as soon as practical.

The Members' Agreement (attached as an appendix) is a private document that sets down in further detail how the members (the FRAs) will work together to ensure that the company runs smoothly and individual FRAs' interests are adequately protected on key decisions.

## **4 Members' Agreement**

### **Unanimous Decisions**

The draft Members' Agreement prescribes that a number of decisions that would otherwise be made by the Directors on a vote will instead be decisions for unanimous agreement of the five FRAs.



These are detailed in Schedule 1 of the Agreement and include decisions:

- **To enter into the lease of the fire control centre building**

Members will be aware that Communities and Local Government (CLG) are keen that the company should sign up to the lease as soon as possible. There are still, however, outstanding questions surrounding this decision, particularly the fact that the lease for the building runs for considerably longer than the life span of the infrastructure services. Officers are seeking clarification on this issue.

- **To enter into other significant contracts relating to the regional control room including contracts with the Government, or other regions, and contracts for the facilities management or information technology infrastructure of the building**

Full costs of these services will be made clear in the full business case when published by CLG. Officers are also awaiting the National Cost Apportionment Model, which is necessary for clarity on the costs for which the company will be liable.

- **To agree the principles by which costs and liabilities of the company will be shared**

i.e. the Regional cost apportionment method

- **To agree an annual budget and business plan for the company**

- **To change the Members' Agreement or the company's other constitutional documents (the memorandum and articles of association)**

- **A number of other significant decisions, including ones which would be contrary to any Fire and Rescue Authority's Integrated Risk Management Plan**

### **Key Principles**

The draft Members' Agreement also contains a number of key principles.

Each FRA has an equal influence in the voting of the company, both at members' and directors' meetings (clause 5.1).

There is a dispute resolution procedure to help resolve deadlock, where unanimous decisions are required, which states (at clause 12.2) that:

*'... the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR) in England and Wales or any successor thereto and the procedure for mediation and the arrangements for apportioning the fees and expenses of the mediator shall be determined by the mediator.'*



The agreement allows FRAs to seek legal remedy, if they disagree with the findings of the mediator.

There is scope for a Fire and Rescue Authority to withdraw from membership of the company after having complied with certain notice requirements.

Members need to be aware however, that the draft Fire and Rescue Service National Framework 2008–11 states that fire and rescue authorities MUST

‘remain a member of the RCC company in their region and participate in its running; including nominating the requisite number of directors and ensuring that those directors fulfil their duties and functions’.

If this requirement remains in the final National Framework it, in effect, makes the Regional Control Centre the monopoly provider of services in the region. Members will be keen to ensure, therefore, that cost control and Best Value is established and maintained within the company from the outset.

All costs incurred by the company during the transition phase (from now until the first FRA cuts over into the new control room) will be met by Government funding. Only if there is an unforeseen shortfall in such funding will the company costs be shared between the FRAs during the transition phase. In that case, costs would be shared equally, unless another cost apportionment formula had by then been agreed (see legal comment).

The Members’ Agreement also states that there will be a review of its terms, the Memorandum, Articles or any other material contracts or policies relating to the operation of the company or the functions from time to time and in any event no less frequently than every 12 months during initial operation and thereafter every 3 years from the commencement of the steady state period. This means that the first review will be due in December 2007 (12 months from the signing of the Articles and Memorandum of Association).

The draft Framework Document states that FRAs MUST

‘enter into an agreement with the RCC company in their region for the delivery of the control service on their behalf by the RCC, no later than 12 months before the RCC becomes operational.’

In other words there will only be a legal requirement to join the company in 2009, however Members will, no doubt, wish to continue to support the Regional Control Centre as they have done from the start.

## **5 Financial Implications**

Officers do not have detailed costs for the Regional Control Centre at present but will inform Members of them, when they become available. Previously, the Government advised that the running of the Regional Control Centres would not cost FRAs any more than their current systems.



One area that officers are discussing, however, is the mention in the draft National Framework which states that:

‘Communities and Local Government has produced a transition planning framework and is providing funding for transition activities under New Burdens principles. Fire and Rescue Authorities are also expected to use resources that would have been used to replace or upgrade existing control rooms to assist with the implementation of FiReControl.’

The principle for calculating new burdens (which applies across Government) is that central Government will cover the net additional costs associated with the provisions of its policy objective – those costs over and above what would normally have been spent to deliver the service – and take into account any additional income or savings. The net additional costs in FireControl terms means the net additional cost of introducing regional control centres over and above the amount that the FRA would otherwise have incurred for upgrading their own control centre.

## **6 Legal Comment**

Legal advice suggests that signing the agreement without the costs apportionment method attached may not be acceptable.

Also the provision at 7.3.c which states:

‘In the event that, in the reasonable estimation of the Company or any of the Authorities, the Initial Operation Costs are likely to exceed, or have exceeded, the sums to be provided by CLG referred to at clause 7.1, the Authorities agree to share between the Authorities in equal proportions any element of the Initial Operation Costs that have already been incurred by the Company in good faith and for which funding cannot be obtained from CLG or other sources.’

may force on the FRA costs, which are not proportional to its use or availability of resources.

Legal advice suggests, therefore, that this paragraph is changed to include the use of the cost apportionment model to calculate any costs on FRAs.

## **7 Equality Impact Assessment**

We are awaiting an EQIA from the FireControl Project.

## **8 Appendix**

Members’ Agreement



## 9 Background Papers

### Shropshire and Wrekin Fire Authority

20 December 2006 Report 11 - The Regional FireControl Centre and Local Authority Controlled Company:

<http://sfweb/internet/Docs/CFA/Meetings/Authority/2006-12-20/11%20-%20Regional%20Fire%20Control%20&%20LACC%20Final.pdf>

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	*
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial	*	Staff	
Fire Control/Fire Link	*	Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	*
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*



**Dated** **2007**

**Hereford and Worcester Fire Authority**

**-and-**

**Shropshire and Wrekin Fire Authority**

**-and-**

**Stoke on Trent and Staffordshire Fire Authority**

**-and-**

**Warwickshire County Council**

**-and-**

**West Midlands Fire and Rescue Authority**

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**MEMBERS' AGREEMENT IN RESPECT OF THE OPERATION OF WEST MIDLANDS FIRE  
AND RESCUE SERVICES REGIONAL CONTROL CENTRE LIMITED**

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This Agreement is made the                      day of                      2007

**Between:**

- (1) **Hereford and Worcester Fire Authority** of Fire Service HQ, 2 Kings Court, Charles Hastings Way, Worcester, WR5 1JR ("**Hereford and Worcester**");
- (2) **Shropshire and Wrekin Fire Authority** of Fire Service HQ, St Michael's Street, Shrewsbury, SY1 2HJ ("**Shropshire**");
- (3) **Stoke on Trent and Staffordshire Fire Authority** of Fire Service HQ, Pirehill, Stone, Staffordshire ST15 0BS ("**Staffordshire**");
- (4) **Warwickshire County Council** of Shire Hall, Warwick, CV34 4RR ("**Warwickshire**");
- (5) **West Midlands Fire and Rescue Authority** of Fire Service HQ, Lancaster Circus, Queensway, Birmingham, B4 7DE ("**West Midlands**");

together the "**Authorities**" or the "**Members**" as the context permits; and

- (6) **West Midlands Fire and Rescue Services Regional Control Centre Limited** (the "**Company**") registered in England under number 6113505 whose registered office is at Shire Hall, Warwick CV34 4RR

**Recitals**

- A The Authorities are the "Fire & Rescue Authorities" (within the meaning set out in the FRSA 2004) for the Region, and each performs the Functions in respect of the area within the Region for which it is responsible.
- B The Authorities have agreed to establish the Company to carry out the Functions from such time as the proposed regional control centre for the Region is ready for operational use.
- C The Authorities wish to enter into this agreement with each other to ensure, amongst other matters, that there is an agreed process:-
  - (a) for the composition of the Board of the Company;
  - (b) for the membership of the Company;
  - (c) for the initial operation of the Company,
  - (d) for initial arrangements as to the funding of the Company, and
  - (e) for a long term agreement for the Company.

**It is agreed:**

**1 Definitions and interpretation**

**1.1 Definitions**

In this Agreement and in the Recitals and Schedules hereto the following definitions shall save as otherwise specifically provided apply:



**Act** means the Companies Acts 1985 to 1989, the Companies Consolidation (Consequential Provisions) Act 1985, the Company Directors Disqualification Act 1986, the Companies Act 2006 and all regulations made under or any amendments made to any of the foregoing from time to time in force.

the **Articles** means the Articles of Association of the Company as previously agreed by the Authorities or as they may subsequently be altered from time to time.

the **Authorities** means the fire and rescue authorities (or their successor bodies) which are the parties to this Agreement and also the Members of the Company and an **Authority** shall mean any one of the Authorities or their successor bodies

the **Board** means the board of directors of the Company or a duly appointed committee thereof.

**Chairman** means the Chairman from time to time of the Board and the Company.

**CLG** means the Communities and Local Government department (or any successor government department or agency which has responsibility for fire and rescue authorities).

the **Company** means **West Midlands Fire and Rescue Services Regional Control Centre Limited**, a company limited by guarantee, the members of which are the Authorities and which is established for the purpose of carrying out the Functions.

**Company Budget** means the Company's budget from time to time;

**Company Business Plan** means the Company's business plan from time to time;

**Company Professional Advisors** means any professional advisors engaged by the Company from time to time to provide legal, financial, technical and other specialist advice to the Company

**Cutover** means, in respect of each Authority, the date upon which the Company commences the discharge of the Functions on behalf of that Authority

**Cutover Period** means the period between the date that Cutover takes place in respect of the first Authority and the date that Cutover takes place in respect of the last Authority in the Region.

**Directors** means the directors for the time being of the Company.

**Directorship Provisions** means the criteria and other provisions as set out in Clause 6 as to appointment of Directors of the Company.

**Dispute** means any disagreement or dispute arising between any of the Authorities in connection with this Agreement.

**Dispute Resolution Procedure** means the procedure set out at clause 12

**Financial Agreement** means the agreed principles for cost apportionment and financial management of the Company to be completed by the Authorities and appended to this Agreement.

**Financial Year** means the year commencing 1<sup>st</sup> April and expiring on the subsequent 31<sup>st</sup> March.

**FRSA 2004** means the Fire and Rescue Services Act 2004 (or any statutory modification or re-enactment thereof).

the **Functions** means the functions set out in the main objects clause of the Memorandum.

**Initial Operation** means the period from the incorporation of the Company until the commencement of the Cutover Period or Termination whichever is the earlier.

**Initial Operation Costs** means all costs incurred or liable to be incurred by the Company during Initial Operation.

**in writing** includes any communication made by letter, facsimile transmission or electronic mail.

**IRMP** means, in respect of each of the Authorities, the Integrated Risk Management Plan from time to time in force in accordance with the FRSA 2004.

**Members** means the members of the Company, being those fire and rescue authorities which are party to this Agreement or their successor bodies appointed in accordance with the provisions of this Agreement.

**Membership Provisions** means the criteria and other provisions as set out in Clause 4 as to the appointment of Members of the Company.

the **Memorandum** means the Memorandum of Association of the Company as previously agreed by the Authorities or as they may subsequently be altered from time to time.

**person** includes any individual, firm, company or other incorporated or unincorporated body.

the **Region** means the West Midlands region comprising the administrative areas of the Authorities.

the **RMB** means the West Midlands Regional Management Board, a joint committee established by the Authorities.

**Service Level Agreement** means the agreement referred to at clause 8 to be entered into between the Company and the Authorities as to the long term performance of the Functions by the Company.

**Steady State Costs** means all costs incurred or liable to be incurred by the Company during the Steady State Period.

**Steady State Period** means the period beginning on the date that the Cutover Period ceases and being the period in which the Company is fully operational in respect of the discharge of the Functions across the Region.

**Termination** means the events set out in clause 15

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to statutes shall include any statute modifying, re-enacting, extending or made pursuant to the same or which is modified re-enacted or extended by the same or pursuant to which the same is made;
- (b) references in this Agreement to Clauses, Sub-Clauses, paragraphs and Schedules are references to those contained in this Agreement;
- (c) clause headings are for ease of reference only and shall not be taken into account in construing this Agreement.

## **2 Commencement and Duration**

- 2.1 This Agreement shall come into operation on the date of incorporation of the Company and shall continue in force until Termination in accordance with clause 15.

## **3 Good faith and co-operation**

- 3.1 In recognition of the aims for which the Company was established in the Region (as described in the Memorandum) and each party's respective obligations under the FRSA 2004 each of the Authorities agrees to act in good faith and in a spirit of co-operation in relation to each other, the operation of the Company, the discharge of the Functions and this Agreement generally.
- 3.2 The Authorities acknowledge that it may be necessary from time to time for the Directors to take action to secure performance of the Functions in the best interests of the Company which may be contrary to the wishes of one or more of the Authorities. The Authorities agree to accept and abide by any decision so made by the Company (provided always that the Company or any Director does not take any action in contravention of the unanimous consent provisions of clause 11).

## **4 Membership Provisions**

- 4.1 The Authorities agree and undertake with each other that :-
- (a) They intend that the only Members shall be each of the five Authorities as are represented on the RMB.
  - (b) They will nominate and authorise representatives of their respective Authorities in sufficient number and capacity to attend and participate in meetings of the Members on behalf of their Authorities .
  - (c) They will take all reasonable steps to ensure that those persons specified in Clause 6.1 (a) report back to their respective Authorities as and when required by that Authority, on a regular basis and at least annually, in order to keep their respective Authorities fully informed of all relevant decisions and proposals in respect of the Company.
  - (d) They will vote against any resolution for the removal of a Director appointed by an Authority under Regulation 35 of the Articles tabled under section 303 of the Companies Act 1985 or any subsequent amendment.

## **5 Members Voting Provisions**

- 5.1 It is the intention of the Authorities that the voting rights of Members shall reflect the voting rights as set out in Regulation 27 of the Articles, namely that each Member has one vote.
- 5.2 Each Authority shall vote against any proposal for any amendment to the Articles, which would have the effect of altering the voting rights as set out in Regulation 27 of the Articles.

## **6 Directorship Provisions**

- 6.1 It is the intention of the Authorities that :-
- (a) There shall be only 5 Directors at any one time, one being appointed by each of the Authorities;

- (b) Each Director shall have one vote;
  - (c) The Directors shall not receive any remuneration for their appointments as Directors from the Company but their respective Authorities may decide (if they so wish) to pay them a Special Responsibility Allowance and must pay them subsistence expenses, travelling expenses and dependent carers' allowance under their Members' Allowance Schemes;
  - (d) The Directors shall report back regularly and at least annually on their activities as a Director to an appropriate meeting of their respective Authorities;
  - (e) The Directors shall be elected members appointed by each Authority under Regulation 35 of the Articles; and
  - (f) There shall be no executive Directors employed by the Company and, for the avoidance of doubt, it is agreed that any person appointed to the post of "Regional Control Centre Director" in accordance with the requirements of CLG shall for all purposes be an employee of the Company and not a Director of the Company within the meaning of the Acts, the Memorandum and Articles or this Agreement
  - (g) The Directors may from time to time invite other persons to attend meetings of the Board or co-opt other persons onto the Board for the purpose of advising or contributing to the discussion of business of the Board, but for the avoidance of doubt no such persons shall exercise voting rights on the Board.
- 6.2 The Authorities shall conduct a review of the composition of the Board and the matters set out in Clause 6.1 in a timely manner prior to the commencement of the Cutover Period.
- 6.3 The Authorities, in their capacity as Members, shall accordingly until such time as the review contained within Clause 6.2 shall be completed and any alternative arrangement agreed between the Authorities in consequence of that review:
- (a) vote against any proposal for amendment to the Articles which would have the effect of permitting more than 5 Directors at any one time;
  - (b) vote against any proposal for amendment to the Articles which would have the effect of providing to a Director more than one vote;
  - (c) not appoint a Director under Regulation 35 of the Articles who is not an elected member of their Authority;
  - (d) remove any Director whose appointment or continuation as a Director is in conflict with the provisions of Clause 6.1;
  - (e) remove any Director who acts against the principles set out in Clause 6.1.

## **7 Initial Operation**

- 7.1 The Authorities agree that it is their common understanding that the Initial Operation Costs of the Company shall be met by CLG by way of grant payments from time to time made to West Midlands on behalf of the Company and all of the Authorities in the Region.
- 7.2 West Midlands covenants with the other Authorities that it will only use the monies received in Clause 6.1 for the benefit of the Company to meet the Initial Operation Costs or such other costs of the Company as the Authorities may unanimously agree.
- 7.3 In the event that, in the reasonable estimation of the Company or any of the Authorities, the Initial Operation Costs are likely to exceed, or have exceeded, the sums to be provided by CLG referred to at clause 7.1, the Authorities agree to:

- (a) promptly notify CLG of the estimated shortfall and to seek further funding from CLG on behalf of the Company and the Region; and
  - (b) incur no further debts or liabilities on behalf of the Company, until such time as means to meet the Initial Operation Costs have been identified to the reasonable satisfaction of all the Authorities; and
  - (c) share between the Authorities in equal proportions any element of the Initial Operation Costs that have already been incurred by the Company in good faith and for which funding cannot be obtained from CLG or other sources.
- 7.4 The Authorities agree (subject to the provisions of clauses 7.1 and 7.3) to provide to each other and to the Company all reasonable assistance in respect of:
- (a) providing suitable induction training and ongoing support to Directors;
  - (b) completing a Financial Agreement as provided for at clause 9;
  - (c) preparing for Cutover in respect of each Authority in the Region;
  - (d) preparing for the Steady State Period and generally the long term operation of the Company and performance of the Functions;
  - (e) complying with any other requirements reasonably directed by CLG from time to time.

## **8 Service Level Agreement and Restriction on Performance of Functions**

- 8.1 The Authorities shall, prior to the commencement of the Cutover Period, enter into a Service Level Agreement with the Company as to the long term performance of the Functions by the Company. For the avoidance of doubt, the Authorities do not under this Agreement give the Company any authority to undertake the Functions.

## **9 Financial Arrangements**

- 9.1 Unless otherwise expressly agreed in writing, the Authorities agree to apportion all Steady State Costs and any other costs claims and liabilities arising directly or indirectly in connection with the Company and the discharge of the Functions in accordance with agreed principles set out in a Financial Agreement to be completed by the Authorities and appended to this Agreement.
- 9.2 The Authorities undertake to review the terms of the Financial Agreement, and in particular the principles by which costs are apportioned as between the Authorities, no later than 6 months following the commencement of the Steady State Period and thereafter at intervals of not more than 3 years for the duration of this Agreement.

## **10 Company Professional Advisors**

- 10.1 The Authorities agree that one or more of them shall take the lead responsibility for appointing and remunerating any Company Professional Advisors they deem appropriate to support the work of the Company during the Initial Operation until such time as the Authorities agree that the Company shall appoint and remunerate such Company Professional Advisors in its own capacity.
- 10.2 The Authorities acknowledge that the Company Secretary at the incorporation of the Company also holds the offices of legal adviser to the RMB and Solicitor and Monitoring Officer to Warwickshire. The Company Secretary may be called upon from time to time to give legal advice to the Company, the RMB and Warwickshire on the same matter and as a Solicitor of

the Supreme Court is bound by the Solicitors' Practice Rules 1990. Where the Company Secretary perceives that a conflict arises he or she shall promptly notify the Company of the same so that alternative arrangements for securing legal advice can be made.

- 10.3 Notwithstanding the provisions of clause 10.2, the Authorities acknowledge that the Company may at any time elect to appoint its own independent legal advisers to advise on any matters including relating to the Functions and general operation of the Company or to act as the Company Secretary.

## **11 Unanimous Decision-making**

- 11.1 The Authorities agree that the matters set out in Schedule 1 shall be reserved for the unanimous consent of the Authorities, in their capacity as Members, and the Directors shall not take any action contrary to the decisions to be taken in Schedule 1.

## **12 Dispute Resolution**

- 12.1 The Authorities shall not, in respect of the matters set out in Schedule 1 nor generally in relation to the operation of the Company, unreasonably withhold or delay their consent. Where any Authority withholds or delays their consent they shall immediately notify the reasons for so doing to the other Authorities and any of the Authorities shall be entitled to invoke the Dispute Resolution Procedure set out below.
- 12.2 In the event of any disagreement or dispute arising between any of the Authorities in connection with this Agreement (a Dispute), the Authorities shall use all reasonable endeavours to resolve the matter on an amicable basis. If one Authority serves written notice on all of the other Authorities that a Dispute has arisen and the Authorities are unable to resolve the Dispute within a period of 5 calendar days from the service of such notice, then the Dispute shall be referred to the respective Chief Fire Officers (or their nominees) of the Authorities.
- 12.3 The Chief Fire Officers shall consult with the Directors and attempt to resolve the Dispute. If they are unable to resolve a Dispute within 5 calendar days of such Dispute being referred to them, then any Authority shall be entitled, giving notice to the other Authorities, to refer to Dispute to mediation as set out in clause 12.4 below, unless the Authorities unanimously agree to extend the period for attempting to resolve the Dispute between themselves.
- 12.4 In the event that any Authority decides to refer the Dispute to mediation in accordance with clause 12.3 the Authorities shall agree on the appointment of a mediator with appropriate knowledge expertise and the procedure that the mediation shall follow. Failing such agreement, the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR) in England and Wales or any successor thereto and the procedure for mediation and the arrangements for apportioning the fees and expenses of the mediator shall be determined by the mediator.
- 12.5 The parties shall co-operate with each other and with the mediator in an attempt to resolve the Dispute amicably. If the Authorities accept the decision of the mediator then they shall execute all such documents and do and take all such action as may be necessary or reasonably desirable to give effect to and/or implement the said decision as promptly as reasonably practicable after the date of the same being so determined. .
- 12.6 The provisions of clauses 12.1,12.2,12.3,12.4 and 12.5 shall not prevent any Authority having recourse to legal proceedings in respect of any matter which is the subject of a Dispute or from serving notice to exit in accordance with clause 13.

### **13 Exit of an Authority**

- 13.1 Subject to the provisions of this clause, any Authority (“the Exiting Authority”) may exit this Agreement and duly cease to be a Member of the Company provided that:
- (i) the Exiting Authority serves on all the other Authorities no less than 12 months’ written notice, such notice to expire at the end of the Financial Year following the Financial Year in which it was served;
  - (ii) the Exiting Authority shall remain liable for its share of any costs and liabilities apportioned under this Agreement and the Financial Agreement in such sums and for such period as may be agreed unanimously between all of the Authorities including the Exiting Authority or, failing that, subject to the Dispute Resolution Procedure set out at clause 12; and
  - (iii) the Exiting Authority shall not be prevented from entering into further arrangements to secure the discharge of its obligations under FRSA2004 including by way of separate contractual arrangements with the Company or any other company established for a similar purpose.
- 13.2 In the event of an Authority serving notice under clause 13.1 then the remaining Authorities may elect to conduct a review of this Agreement and the operation of the Company in accordance with clause 14.

### **14 Review**

- 14.1 The Authorities agree to review the terms of this Agreement, the Memorandum, Articles or any other material contracts or policies relating to the operation of the Company or the Functions from time to time and in any event no less frequently than every 12 months during Initial Operation and thereafter every 3 years from the commencement of the Steady State Period.

### **15 Termination and Survivorship**

- 15.1 This Agreement shall terminate on the occurrence of any of the following events:
- (a) the unanimous agreement of all of the Authorities who are the Members of the Company for the time being; or
  - (b) the winding up or dissolution of the Company in accordance with clause 15.2.
- 15.2 In the event that the Authorities agree unanimously (in accordance with clause 11) to wind up the Company, or the Company otherwise dissolves, the Authorities shall use best endeavours to agree a process for the apportionment of the assets and liabilities of the Company to the extent that these are not provided for in the Financial Agreement or elsewhere. In the event that agreement cannot be reached this matter shall become a Dispute which any Authority may submit to the Dispute Resolution Procedure set out at clause 12.
- 15.3 In the event of Termination the Authorities agree that all provisions of this Agreement which are capable of survivorship (including but not limited to the following provisions) shall remain in full force and effect: clause 3, clause 12, clauses 16 to 22 inclusive.

### **16 Indemnity of Directors and insurance**

- 16.1 Each of the Authorities agrees and undertakes to indemnify, and keep indemnified, its appointed Director to the fullest extent permissible by law and to procure that adequate insurance arrangements are in place to meet the reasonably foreseeable liabilities arising in

respect of that Authority and its appointed Director under this clause and this Agreement in general.

- 16.2 Notwithstanding the provisions of clause 16.1, the Authorities agree that the Company shall procure its own insurances commensurate with the risks and liabilities arising in respect of the Company and the Directors and that first recourse will be made to such insurances in the event of any claim or prospect of claim against the Company or the Directors.

## **17 Waivers, remedies cumulative, amendments, etc.**

### 17.1 No waiver

No failure or delay by any of the Authorities hereto in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by any of the Authorities hereto of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

### 17.2 Rights and remedies

The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.

### 17.3 Amendments etc

No provision of this Agreement may be amended, modified, waived, discharged or terminated, otherwise than by the express agreement in writing of the Authorities hereto nor may any breach of any provision of this Agreement be waived or discharged except with the express written consent of the Authorities not in breach.

### 17.4 Third party rights

The Authorities do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

### 17.5 No assignment

The provisions of this Agreement shall be binding on and enure to the benefit of the successors of each party hereto provided that no party may agree to assign, transfer, charge or otherwise dispose of or subcontract any of its rights or obligations hereunder without the prior written consent of the other parties.

## **18 No partnership or agency**

Nothing in this Agreement shall be deemed to constitute a partnership between the Authorities nor, save as expressly set out herein, constitute any Authority the agent of another Authority for any purpose. In addition, unless otherwise agreed in writing between the Authorities, none of them shall enter into contracts with third parties as agent for any Authority nor shall any Authority describe itself as agent as aforesaid or in any way hold itself out as being an agent as aforesaid.

## **19 Conflict and interpretation**

In the event of any conflict between this Agreement, the Memorandum, Articles or Financial Agreement, the provisions shall be interpreted in the following (descending) order of precedence: this Agreement; the Memorandum; the Articles the Financial Agreement; the Service Level Agreement;. The Authorities shall exercise all voting and other rights and



powers available to them so as to give effect to the provisions of this Agreement and shall further if necessary procure any required amendments as may be necessary to this Agreement or any other agreements or documents.

## **20 Notices**

### **20.1 Manner of service**

Any notice or other communication given or made under this Agreement shall be in writing and may be delivered to the relevant Authority or sent by first class prepaid letter or facsimile transmission to the address of that Authority specified in this Agreement or to that Authority's facsimile transmission number thereat or such other address or number in England as may be notified hereunder by that Authority from time to time for this purpose and shall be effectual notwithstanding any change of address not so notified.

### **20.2 Validity of service**

Unless the contrary shall be proved, each such notice or communication shall be deemed to have been given or made and delivered, if by letter, 48 hours after posting, if by delivery, when left at the relevant address and, if by facsimile transmission, when transmitted.

## **21 Governing law and jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with English law and the Authorities agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Agreement.

## SCHEDULE 1

### UNANIMOUS DECISION-MAKING

1. The following decisions shall in accordance with clause 11 require the unanimous consent of the Authorities:

- (a) The adoption or variation of, or decisions contrary to, the Company's Budget and the Company's Business Plan;
- (b) Changes to the Company's name, the Memorandum, the Articles or this Agreement;
- (c) The adoption or variation of the Financial Agreement referred to in clause 9;
- (d) The undertaking or variation of any contracts or legal commitments which are material to the Company's performance of the Functions (which shall include, but not be limited to, contracts with CLG, the Authorities or with other fire and rescue authorities in England, or other companies established under the FRSA 2004 to discharge the Functions across England, and material contracts relating to the Company's accommodation, facilities management and IT infrastructure);
- (e) Appointment of the Regional Control Centre Director;
- (f) Decisions which are contrary to the IRMP of any of the Authorities;
- (g) Decisions which are contrary to this Agreement, the Memorandum or Articles, the Financial Agreement or Service Level Agreement;
- (h) The adoption or variation of any policies or procedures which are material to the Company's performance of the Functions;
- (i) The admission of Members to the Company;
- (j) The winding up of the Company by the Members;
- (k) Any further matters reserved in the Articles for the unanimous consent of the Members, or Authorities, as the case may be.

In witness whereof this Deed has been duly executed

**EXECUTED AS A DEED** by )  
**Hereford and Worcester** )  
**Fire and Rescue Authority** )  
by affixing its Common Seal the day and )  
year first before written )

Authorised Signatory

**EXECUTED AS A DEED** by )  
**Shropshire and Wrekin Fire Authority** )  
by fixing its Common Seal the day and )  
year first before written )

Authorised Signatory

**EXECUTED AS A DEED** by )  
**Stoke on Trent and Staffordshire** )  
**Fire Authority** )  
by affixing its Common Seal the day and )  
year first before written )

Authorised Signatory

**EXECUTED AS A DEED** by )  
**Warwickshire County Council** )  
by affixing its Common Seal the day and )  
year first before written )

Authorised Signatory

**EXECUTED AS A DEED** by )  
**West Midlands Fire** )  
**and Rescue Authority** )  
by affixing its Common Seal the day and )  
year first before written )

Authorised Signatory